

# *myStateTaxOffice*

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## *South Carolina consolidated return allowed for members of different federal consolidated groups*

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### *In brief*

A group of subsidiary corporations may file a South Carolina consolidated return even if they are included in separate federal consolidated groups or file separately for federal purposes when they are under the control of a common parent and have nexus with South Carolina. At least eighty percent of the total combined voting power of all classes of stock of all corporations that are a party to a consolidated return must be under the control of the same entity, but that control entity does not have to be part of the consolidated group [[South Carolina Private Letter Ruling #12-4](#), 8/27/12].

### *In detail*

Subsidiary One (SUB1), through several disregarded entities, is 100% owned by Parent, a foreign corporation not subject to federal or South Carolina income tax. Subsidiary Two (SUB2) is also 100% owned by Parent through several disregarded entities. As a foreign corporation, Parent is ineligible to file as part of a federal consolidated return with SUB1 or SUB2. Consequently, SUB1 and SUB2 cannot file as a single consolidated group for federal tax purposes because their common parent must be included in the federal consolidated return. Instead, SUB1 and SUB2 are members of different federal consolidated groups, which include several of their respective subsidiaries.



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SUB1 and SUB2, and several of their respective subsidiaries, have income tax nexus with South Carolina and use the same accounting year.

*Subsidiaries may file a South Carolina consolidated return*

South Carolina Code Sec. 12-6-5020 provides, in relevant part, that a consolidated return may be filed for two or more corporations under "substantially the entire control of the same interest." "Substantially the entire control" means the ownership of at least eighty percent of the total combined voting power of all classes of stock of all corporations that are a party to a consolidated return. Additionally, all corporations included in a consolidated return must be subject to South Carolina income tax and must use the same accounting year. Finally, all entities disregarded for federal purposes are also disregarded for South Carolina purposes.

In this case, Parent, through several disregarded entities, is the owner of 100% of all classes of voting stock of SUB1 and SUB2. Since Parent is the common owner with total control of at least 80% of the total combined voting power of all classes of stock, the South Carolina Department of Revenue found that SUB1, SUB2, and all qualifying subsidiaries may file as members of the same South Carolina consolidated return. While South Carolina law requires that at least eighty percent of the total combined voting power of all classes of stock of all corporations that are part of a consolidated return must be under the control of the same entity, that control entity is not required to be a part of the consolidated group.

The letter ruling ends with the following statement: "If the filing of a consolidated return in the manner described above does not fairly represent the extent of the taxpayers' business in this State, under Code Section 12-6-2320, the taxpayer may petition or the department may require another method of reporting, including combined unitary reporting."

*Actions to think about*

The statute's plain language suggests that there is no requirement for a common parent to be part of the South Carolina consolidated group. However, the federal rule precluding a consolidated return with a foreign parent may have generated some confusion regarding South Carolina's treatment. This letter ruling serves as clarification that a consolidated return election is available in South Carolina, even though the common parent is foreign.

As part of a decision to file a South Carolina consolidated return, taxpayers should note that a consolidated return is made on a post-apportionment basis. Pre-apportionment consolidated returns are subject to the approval of the Department of Revenue.



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## *Let's talk*

If you have questions about Private Letter Ruling #12-4, please contact either of the following individuals:

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